Supreme Court, U.S.
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No. 71-535

In the Supreme Court of the United States

OCTOBER TERM, 1971

WILLIAM FREEDMAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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The judgment of the court of appeals was entered on June 22, 1971, and a petition for rehearing was denied on July 15, 1971. The 90-day period for filing a petition for a writ of certiorari prescribed by 28 U.S.C. 2101(c) expired on October 13, 1971, and no extension of time was granted. The petition was filed on October 14, 1971. Since the 90-day time limitation is jurisdictional, the petition is untimely and should be denied.[1]

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

NOVEMBER 1971.

[1] Petitioner's motion under Rule 41(e), F.R. Crim. P., was denied only after his conviction in the criminal proceeding (Pet. 8-9). The property seized by the government, including the $13,000 here in issue, was not introduced into evidence in that proceeding (Pet. 8-9). In the present posture, therefore, the motion must be considered to be solely for the return of property and in no way tied to the criminal prosecution. Cf. *Di Bella* v. *United States*, 369 U.S. 121, 131-132.

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